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PUBLIC MANAGEMENT AND COLLECTIVE NEGOTIATIONS.

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GROWING UNION ORGANIZATION OF GOVERNMENT EMPLOYEES IS ATTRIBUTED TO THREE MAIN FACTORS-- (1) UNION NEED OF LARGER MEMBERSHIP FOR INCREASED INCOME AND PRESSURE GROUP STRENGTH, (2) SUCCESSFUL ORGANIZATION OF GOVERNMENT WHITE COLLAR WORKERS TO PROVIDE UNION LEADERS WITH AN IMPORTANT WEDGE IN ORGANIZING WHITE COLLAR WORKERS IN THE PRIVATE SECTOR, AND (3) UNION ACTIVISTS VIEW THAT UNIONISM WILL RAISE WORKING CONDITIONS, WAGES, AND FRINGE BENEFITS OF GOVERNMENT EMPLOYEES TO LEVELS FOUND IN THE ORGANIZED PRIVATE SECTOR. TEACHER ORGANIZATION NEGOTIATIONS HAVE RESULTED FROM THE DESIRE OF TEACHERS FOR GREATER SECURITY OR CONTROL OVER THEIR WORKING CONDITIONS AND FOR ELIMINATION OF EMPLOYER DISCRIMINATION IN DECISIONS AFFECTING TEACHERS. FOR BOTH SUPERINTENDENTS AND TEACHERS, A SUGGESTED ALTERNATE TO THE PRESENT ALL-INCLUSIVE NEA ORGANIZATION IS A COMMUNITY-LEVEL STRUCTURE WHICH WOULD PROVIDE FOR NEGOTIATIONS BETWEEN THE LOCAL TEACHER ORGANIZATION AND THE SUPERINTENDENT AS DISTINCT UNITS BUT WOULD INCLUDE THEM IN THE SAME STRUCTURE ON THE STATE AND NATIONAL LEVEL. NEGOTIATION IS VIEWED AS A COMPLEX PROCESS REQUIRING THOROUGH PREPARATION, AN UNDERSTANDING OF THE TOTAL NEGOTIATION PROCESS, AND CAREFUL PLANNING FOR THE ADMINISTRATION OF A NEW LABOR AGREEMENT. THE ADEQUATE RESOLUTION OF NEGOTIATION IMPASSES DEPENDS UPON A PROBLEM-SOLVING ORIENTATION ON THE PART OF MANAGEMENT AND A WILLINGNESS TO NEGOTIATE WITHIN THE LIMITS OF MANAGERIAL RESPONSIBILITY. THE COMPLETE DOCUMENT "COLLECTIVE NEGOTIATIONS AND EDUCATIONAL ADMINISTRATION," OF WHICH THIS IS CHAPTER 4, IS AVAILABLE FROM THE UNIVERSITY COUNCIL FOR EDUCATIONAL ADMINISTRATION, 65 SOUTH OVAL DRIVE, COLUMBUS, OHIO 43210, AND FROM DR. ROY B. ALLEN, COLLEGE OF EDUCATION, UNIVERSITY OF ARKANSAS, FAYETTEVILLE, ARKANSAS 72701, FOR 32.50. (JK)

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CHAPTER 4

PUBLIC MANAGEMENT AND COLLECTIVE NEGOTIATIONS

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Within the last three years, over a half-million public employees at all levels of government—Federal, State and Municipal—have joined unions. Professional organizations, in existence for many years, have recently begun to engage in union-like activity at an unprecedented rate, influenced both by the desires of their members and the pressure of standard unions upon them for membership adherence. In light of these developments, it is little wonder that *Business Week* magazine recently referred to public employees as the “growth stock” of American unionism. Before moving to a discussion of the manifold new problems that employee unions will cause for public managers, I would like to make a few remarks about some of the reasons for these developments as background to my specific topic.

THE GROWTH OF PUBLIC UNIONISM

Why are the unions active in organizing government workers as never before in our history? In brief summary, the reasons are three. First, unions, like other bureaucracies, need growing membership in order to increase their income and their pressure group strength. Government workers represent one of the single largest pools of unorganized workers in our society and are, therefore, tempting organizing bait for the trade union movement.

Second, and probably more important, the union leaders feel that if they can organize a substantial body of the

government workers who are engaged in white collar occupations, this will provide them with an important wedge in organizing the tremendous numbers of white collar workers in the private sector of our society, a group that has hitherto responded largely with indifference to union organizing efforts.

Third, a large number of dedicated union activists in our society genuinely believe that government workers have become "second class citizens." They believe that unionism will have many benefits for government employees; that it will bring their working conditions, their wages and their fringe benefits up to the levels that prevail in the organized private sector.

These union efforts to organize government employees have been substantially aided in recent years by executive orders and legislation, in both State and Federal jurisdictions, which have encouraged negotiatory procedures and collective bargaining contracts for government employees. Various jurisdictions of government have promulgated these enactments partly for political reasons and in response to political pressures, but more importantly because government at all levels is being faced with a challenge. Representatives of the business community, bar associations and others, have been repeatedly questioning government in the following manner: "For 30 years now, government has insisted that private employers bargain collectively with representatives of their employees. If public employees want to organize, why isn't sauce for the goose sauce for the gander? Suitably modified to meet the exigencies of public service, why should not government treat its own employees in the same fashion that it forces private employers to deal with theirs?" There is no good answer to this question—and I think it is the largest single reason why government at all levels is today setting up negotiating systems to establish contractual relationships with organizations of its own employees.

Even from this brief summary I believe it is easy enough to see what the motives of the unions are in the field of public employment and why government agencies at all levels are being forced, ever increasingly, to establish bargaining relationships. The more fundamental question

is why government employees are responding to unions and to the opportunity to negotiate collectively as never before. With particular reference to teachers, why is this large and important group in our society, a group that is clearly white collar in orientation, turning to union and union-type activities? The reasons are many and complex, but are certainly worthy of brief consideration.

Teachers, of course, have had significant economic dissatisfactions for many years. Interestingly enough, however, the move toward union-like activities and unionism itself among teachers has come during a period when most school systems in our nation have been moving rapidly toward remedying some of the worst of teachers' economic problems. In the last decade the economic rewards of teaching, over the nation as a whole, have moved up more rapidly than have the earnings of unionized workers generally. I cannot conclude, therefore, that the move toward teacher unionism is solely a response to economic dissatisfactions.

We must look more deeply at the nature of the teaching job for additional answers. Part of the answer may lie in a desire for greater security. Here I do not mean economic insecurity in the sense that a satisfactory teacher is apt to lose or be unable to find a job. Security is more than economics. It includes elements such as control of where, how and under what conditions one will work. As we change our educational system and teaching methods, the changes in and of themselves threaten the security we all find in the status quo—in using our established skills to do a job we like. In the work environment a union is a conservative institution which says to the employer, "Wait. Let's consider the impact upon the employees before we make changes that adversely affect their lives and the way they do their work." In this sense, the response of unionism, or increasingly aggressive behavior on the part of professional organizations, is simply a facet of the attempt to increase overall job and personal security which is endemic throughout our society today.

Finally, I think teachers are turning to union-like activity because they want an end to discrimination against them. By discrimination I do not speak in the sense of

invidious distinctions based upon race, color or creed as we commonly use the word. I here use the word in the sense that unions commonly use it. They say that the employer has discriminated against employees whenever he makes any choice between them—choices in regard to promotions, demotions and assignments of work—where the reasons for these choices are not objectively apparent to the employee and the organization which represents him. Put in another way, I think that teachers, like white collar workers in our society generally, are demanding more knowledge of why things are done and an increased voice in the decisions that affect them. We have for years said to teachers, "You are a trained and educated person with a job which is of immense importance in our society." Yet, in many cases we have given teachers very little voice in the way in which they conduct their work. Moreover, in a regrettable number of situations we have made them subject to the arbitrary and capricious decisions of principals and supervisors. I believe that the response of union-like activity on the part of teacher organizations is in substantial part a desire on the part of teachers to increase their knowledge of decisions affecting their work and to provide the psychological satisfaction derived from having a part in the decisions that affect their own destiny.

All of this is simply preliminary to my major topic—how does the public manager deal with his new responsibility of negotiating collectively with representatives of his employees? I think this background is pertinent, nonetheless, for I believe one can always deal most effectively with the person on the other side of the table if one understands some of the motives, aspirations and problems of his opponent. Knowing these things should allow the public manager to do a better job in dealing with representatives of his employees.

Such knowledge will by no means solve all of their problems, however. Among these will be significant questions of who is to be in what kinds of bargaining units? Who is going to do the negotiating? How do we get ready to negotiate, and on what subjects? What should the negotiating process be like in a situation where the manager is a representative of the public and responsible to an electe

board? What will be our increased problems of personnel administration if we negotiate a written agreement that commits us to administer personnel policy in a fixed fashion for the life of the contract? These are the kinds of questions to which I will now turn.

BARGAINING UNIT PROBLEMS

One of the more severe sources of difficulties that I see facing our school systems today is the question of what in the private sector we refer to as "appropriate bargaining units." How does the educational administrator negotiate with an employee organization, often an affiliate of the National Education Association, when he too is likely to be a member of that same organization? In the case of affiliates of the American Federation of Teachers this is not really a problem since the AFT represents teachers and non-supervisors almost exclusively. But in the case of the NEA affiliates this is a serious problem. Are we to have units that include teachers, principals and supervisors, even conceivably superintendents, when all of these people may be members of the same state and even city educational associations?

Here, I think, a possible answer may be that NEA affiliates must look toward separate units, perhaps classifications of memberships as well, based upon purpose. For example, all persons engaged in public education have certain common interests at the state level. I think, therefore, that teachers and supervisors alike might be members of a state educational association in which they would join for lobbying and general professional relationships. At local community levels, however, I think we may find it necessary to move toward a situation of a community educational association composed exclusively of non-supervisory teachers who would negotiate collectively with managerial representatives of the school board. The teachers would also bring contractual grievances against their principals or other supervisors, and this too might very likely require separate kinds of memberships in the parent organization which yet permit strong and independent teacher units. I think only by this, or some similar adjustment, will the NEA affiliates in the long-run be able to maintain a viable

future in the face of increased pressure from teachers and from the American Federation of Teachers for militant negotiating activity. The alternative is a system wherein grievances and problems are mediated with the employee organization—a feasible idea, but one which involves some abdication of the management role.

PREPARING FOR NEGOTIATIONS

Viewed as an entirety, the negotiating process includes three different elements: (1) preparing for negotiations, (2) the negotiating process itself, and (3) planning for the administration of a new labor agreement. Each of these elements is worthy of extended discussion. I will here attempt only to sketch in broad outlines the kinds of planning and staffing for each that has to be undertaken by all who will participate in the process. Parenthetically, the process is not greatly different whether negotiations take place in the private or the public sector.

Preparation for negotiations is an astonishingly time-consuming process, seeming particularly so to those who have never engaged in it. It involves the selection of a negotiating team, the planning of the general position of management in regard to the forthcoming negotiations, and frequently, preparing specific contract proposals that management will wish to see incorporated in any agreement which eventuates.

Management will often find it necessary or desirable to delegate the responsibility for preparation and negotiation to staff members who can be spared from their regular duties for substantial periods of time. The role of the school board is that of making general policy—negotiation is a staff function. In larger public school situations these time requirements often mean that the chief administrator may not be able to devote sufficient time to the process and will have to delegate the negotiating function to others on his staff. Upon occasion school boards have hired outside counsel or experienced industrial relations consultants to help them in their preparations and the negotiations themselves. Even if this is done some of those who participate in negotiations should be fully familiar with the day-to-day operating requirements of the system in order that the

administration will maintain its ultimate managerial responsibility to the public. Without this kind of precise operational knowledge even the most experienced negotiator might make a seemingly harmless commitment that would unduly hamper operating supervisors.

The members of the management team will find it necessary to familiarize themselves with what kind of contractual commitments have been undertaken by others faced with similar problems, and how similar contractual commitments might apply to their specific situation. The planning and preparation stage should include discussion on all of the many subjects that the employee organization will feel appropriate for negotiations. In the financial area, these will include such matters as salaries, progression systems, vacations, pensions and retirement systems, sabbaticals and leaves of absence.

In addition, those who are planning for the negotiations will have to consider carefully whether they will also negotiate in any other areas which have important economic implications for the system but are not as directly related to employee compensation and benefits. Among the possibilities in this area are such subjects as whether negotiations will cover class size, reduction in instructional load, specialized services and other aids to teachers, program preferences, rotation in teaching assignments, and possibly a detailed and specific grievance procedure. I do not necessarily imply that all of these subjects are desirable in school negotiations, only that in many cases teacher organizations may want to discuss them. Advance planning requires consideration of whether the administration will negotiate upon them and if so, to what degree.

In thinking about many of these subjects, and I am sure many school administrators feel no great enthusiasm in doing so, I would tell you of a comment that Bernard Donovan, Superintendent of Schools in New York City, once made to me. He told me that many people have commented on the vast range of subjects covered by the New York City contract and loudly bewail many of the things that are in it. He said, "90% of the things that are in our contract are things we would have liked to have had when we were teachers. Many other things that are in the contract are

things that we, as administrators, at one time or another thought would be nice to do for our teachers, but for reasons of time or money didn't get around to doing. Now, the union has come in and hit us over the head to obtain these things and it, of course, has taken all of the credit." I think there is a definite lesson for all of you in this remark, both for those educators who have not yet been faced with teacher organizations and for those who may be planning the positions that they will take in future negotiations. Confusion between rights that are essential for management to retain and things that are merely pleasant or desirable, along with reliance upon tired concepts of sovereignty as a reason for inaction, will inevitably lead to negotiating difficulties.

THE NEGOTIATING PROCESS

So far as the negotiation process itself is concerned, I simply am unable here to go into it in detail. As a matter of fact, the subject of "how to negotiate a labor agreement" is not something that we have ever taught satisfactorily in the universities. Most negotiators learned their job by the simple expedient of watching others do it, learning from their failures and successes, their strengths and weaknesses. Somebody once remarked, "No one is a complete failure—he can always serve as a bad example." I suppose that this is the way most of us have learned how to negotiate labor agreements.

Sufficient to say that, if at all possible, it is a job for professionals. If not, and in the smaller systems professionals or people with experience are ordinarily not available, then I think negotiation should be undertaken by someone who has a reputation for fairness and firmness, and yet a person who genuinely believes in the legitimate right of employees to discuss the elements of the personnel and work relationship. I consider that factual knowledge of the work requirements and the desire to negotiate fairly and in good faith are the absolute minimum requirements for success in negotiations. The negotiating table is not a place where trickiness is necessary or even desirable. Difficult issues must be faced and discussed thoroughly. Once this has been done a management refusal to accede to the employees' request, when based in the logic of management's ultimate

responsibility to manage, becomes at least palatable to the employee group.

A brief comment on the economics of public negotiations is certainly in order here. I am often asked, "How can we negotiate wages when our income must come from the state and from local taxes, sources beyond our power of control?" Several solutions are possible, none totally satisfactory. You can wait until the dollars available are known, and then negotiate on the distribution of these available funds. You can negotiate salary schedules in advance of knowing how much will be available, and then join with the employee organizations in public relations and lobbying activities to try to procure the necessary funds. Finally, you can negotiate alternative schedules and allocations, dependent upon what might become available. In any event, valid and rational wage negotiations have taken place covering public employees in many parts of our nation, so it is at least a possible if not a perfect system.

CONTRACT ADMINISTRATION

Finally, public managers who are faced with the responsibility for collective negotiations must, even before negotiations are concluded, give some thought to the way that the working relationship will change once the contract is negotiated. One of the principal requirements here is that all those who will have any responsibility for carrying out the provisions of the contract be fully informed, immediately upon the completion of negotiations, how the management negotiators construe the language that they have agreed upon and how they intend that it shall be carried out. This requires meetings of all concerned and a new and additional kind of training program. The chief bugaboo of all industrial relations men is contract administration by supervisors which varies from the intent of those who negotiated the agreement. This results in differential administration, inevitably viewed by employees as unfair. Moreover, any administrative practices that employees view favorably become viewed as established "past practices" that can actually emasculate the specific intent or language of the contract itself.

This is particularly true if a grievance procedure and an arbitration system is negotiated as part of the agree-

ment. I recommend that established grievance procedures be negotiated in agreements, for it seems to me that this is one of the most significant things that employees achieve in public sector collective negotiations. It is the means by which elements of "due process" are added to the working relationship. At the same time, management must be aware that at the end of the grievance procedure frequently lies recourse to binding or advisory arbitration by an outsider. Under these circumstances, management no longer is the sole judge of the correctness and reasonableness of its own acts toward employees. Now, management must look at its own acts, not in the light of whether it thinks it is being reasonable and fair, but in light of the question, "Is the reasonableness and fairness of our act defensible to an outsider?" The working relationship in private industry is much different than it was a generation ago simply because of this change in standards by which management's acts are judged. I suggest to you the strong possibility that a similar change is coming in public employment relationships.

NEGOTIATING IMPASSES

I have been describing some of the elements of public negotiations in terms of a process in which a full and fair discussion of the issues will result in some kind of an agreement between the parties. In fact, this is the result that ordinarily occurs. At times, however, people are unreasonable, and even reasonable men may differ strongly. In such an event, a bargaining impasse may occur. In a few situations, as you are all well aware, teacher strikes have taken place. The possibility of such strikes is, I know, a matter of deep concern to all educational administrators. In my opinion, however, they have resulted in concern and controversy disproportionate to the real seriousness of the problem. I do not mean that a teacher's strike, or in fact a strike on the part of any body of essential public employees, is not a serious problem. I simply mean that the occurrence of such impasses is quite exceptional even in the private sector. Certainly they should not occur with frequency in public sector negotiations.

There are many means of solving most of the difficulties that will arise in the course of collective negotiations.

Among them, and without going into detail, are such procedures as off-the-record conferences, studies by special subcommittees, mediation and conciliation, and occasionally reference to outside or higher level fact-finding.

Probably as important as any of these is simply the technique of staying problem-oriented rather than proposal-oriented. By this I mean that a management negotiator should always remember that a union proposal is simply the union's *proposed solution* to a problem. If management digs deeper to ascertain the real nature of the problem behind the proposal, it may well find that the problem is real and, moreover, that it is susceptible to a number of alternative solutions. Hopefully, one or more of these alternatives will be more acceptable to the management than the union's original proposal, and yet will be equally acceptable to the union as well.

CONCLUSION

In conclusion, let me outline for you one of the greatest difficulties that many of us whose experience is in the private sector have had in speaking on collective negotiations to public managers. Essentially, I think, we have left our listeners in a state of some mental indigestion.

On the one hand, we say that collective negotiations with public employees, if they desire to organize, is right and proper and that it should be approached on a good faith basis by public managers. We say that concessions are in order where real employee problems have been identified. We feel that public manager's decisions can appropriately be questioned by outsiders, at least in many circumstances, and therefore that a negotiated grievance procedure is appropriate. On the other hand, we say that collective bargaining is no job for the amateur, that he who participates in negotiations should be extremely cautious and careful before he makes major concessions to employees for fear that essential management rights will be given up. I do not wonder that some have asked what I and others like me are really saying.

In my own mind, I attempt to resolve this apparent conflict by distinguishing between the "rigid" and the

"hard" negotiator. The rigid negotiator is one who doubts the legitimacy of employee organizations in the public sector. He feels that unions have no place in the public service, and that union representatives frequently do not represent the real desires and the best interests of those whom they purport to represent. He feels that the public employment relationship was a fine one in which employees were never discontented, at least not seriously so, until the union organizers and malcontents came along. Such an administrator will not negotiate in good faith and he will not identify or engage in negotiations in any genuine spirit of problem solving. He is headed directly for trouble with employee organizations and he deserves it.

Alternatively, if the public manager approaches his new responsibilities toward collective negotiations in the opposite frame of mind, recognizing both the legitimate interests of the employees in many of these areas and their privilege to organize and bargain, and if he makes his best effort to solve existing problems he is then negotiating in good faith. Having done so, he may yet find that those on the opposite side of the table are unreasonable and demand compromises beyond the point where management can legitimately and rightfully go. At this point, it is not only the public manager's privilege, it is even his obligation to be hard, to say, "We have discussed these matters many times, we have agreed on many things, and management has made many compromises. This is as far as we can rightfully go in terms of our obligation as managers. This is our last offer." At this point, if the management representative has negotiated openly and in good faith, the representatives of employees are ordinarily reasonable.

In the private sector we negotiate over 100,000 labor agreements every year. In only a small percent of these do work stoppages ever occur. In a majority of negotiations the possibility is never even mentioned. If they can do it, I am confident that you can too. As a matter of fact, you may even teach us many things about successful and good faith negotiations that we have yet to learn.